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Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JACK C. "JACK" BRIGGS,

Petitioner,

v.

ESTATE OF LAWRENCE E. HAGEN,
A. CONSUELO S. HAGEN AND LYNN G. YOUSE,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respondents ESTATE OF LAWRENCE E. HAGEN, A. CONSUELO S. HAGEN and LYNN G. YOUSE file this Response to Petitioner JAMES C. "JACK" BRIGGS' Petition for Writ of Certiorari.

QUESTION PRESENTED

Whether a jury award of actual and exemplary damages for common law fraud which was subsequently upheld by the District Court and the Circuit Court of Appeals is supported by the evidence.

STATEMENT OF THE CASE

The pertinent facts are contained in the opinion for the Fifth Circuit Court of Appeals.

REASONS FOR DENYING THE WRIT OF CERTIORARI

I. THE PRESENT CASE CONCERNS NO ISSUE WORTHY OF A GRANT OF CERTIORARI.

The Petition for Writ of Certiorari, which involves only a factual sufficiency question arising under a purely state law cause of action, presents no "special and important" issue which would justify the grant of a Writ of Certiorari by this Honorable Court. This case presents none of the considerations outlined by Supreme Court Rule 17.[1]

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[1] Supreme Court Rule 17 provides, in pertinent part:

Considerations governing review on certiorari

1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter, or has decided a federal question in a way in conflict with a state of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

The present case involves no issue of federal law. The present case involves no conflict between decisions of any federal courts of appeals.

As is evident from the Petition, this case involves only Petitioner's renewed complaint that the evidence did not support a jury award of damages against him for common law fraud. Both the District Court and the Fifth Circuit Court of Appeals have examined the evidence and found it sufficient to support the jury's award. Because the Petition for Writ of Certiorari raises only factual questions which arise under a Texas common law cause of action, it fails to present a question worthy of review as determined by the factors outlined in Supreme Court Rule 17, and should be denied.

II. THE JURY FINDING OF COMMON LAW FRAUD WAS SUPPORTED BY THE EVIDENCE.

A jury verdict may be set aside only if, after considering all the evidence in the light most favorable to the opposing party, "the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that reasonable men could not arrive at a contrary verdict." *Boeing Company v. Shipman*, 411 F.2d 365, 373-75 (5th Cir. 1969). If there is "substantial evidence" that might lead reasonable men to differ, the issue is for the jury and its decision should be upheld. *Id.*

Although Briggs seeks to divorce himself from any conduct which occurred after December 8, 1980, the date that his stock in USEMCO was transferred to Wilson, Briggs ignores his subsequent affirmative misrepresentation in the letter to the Hagens of December 15, 1980. In that letter, he encouraged continued investment and involvement in the six well program. Briggs indicated in the letter that his "ownership interest in, and future operations of these six wells has not changed." In light of

his receipt of a casing point election as part of the transfer of stock on December 8, 1980, this statement was an affirmative misrepresentation. Briggs stood to gain financially from further drilling investments by the Hagens as the result of his undisclosed casing point election.

Respondents had been told by Briggs in that letter that his personal funds were at risk in the six well program on the same basis as theirs. Ms. Hagen and Ms. Youse both testified that had they known about Briggs' casing point election and lack of funds at risk in the six well program, they would not have continued to invest in the six well program and they certainly would not have expended the additional funds necessary for the Scheble well program. The record demonstrates that Briggs went to great lengths to mislead Respondents about his continued involvement, and to convince them that the basis of his investment "had not changed" to induce them to continue investing in the six well program. Had it not been for these statements, the testimony indicates that Respondents would not have invested the additional money which they did in drilling the Scheble well.

The District Court held that "judgment should be entered on the verdict as to the Scheble well, each answer being supported by competent evidence." The Fifth Circuit Court of Appeals held that:

> The jury therefore had an adequate basis to decide that Briggs intended the Hagens to continue their participation in the six well program, that he had a motive for doing so, and that he deliberately misled them. The jury might also have concluded that Briggs' misrepresentation was material, and that the Hagens participated in the Scheble Well in reliance upon it.

In the present case, there is ample evidence in the record which demonstrates that Petitioner's letter of December 15, 1980, was an affirmative misrepresentation which was not

corrected, and which misled Respondents into continuing to participate in the six well program, and ultimately in investing additional funds in the Scheble well. Both the District Court and the Court of Appeals have assessed the evidence, and have found that the evidence supports the jury's verdict for actual and exemplary damages for common law fraud.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Respondents pray that Petitioner's Petition for Writ of Certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing Response to Petition for Writ of Certiorari was placed in the U.S. mails, certified, return receipt requested, to all counsel of record on this 8 day of Dec, 1986, to the following:

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